

Understanding the Non-Manufacturer Rule (NMR)

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The Nonmanufacturer Rule Program

- Applies to firms that receive supply contracts, above \$25,000, under the 8(a) program or on a small business set aside, who can be either a manufacturer or a nonmanufacturer of a product;
- A nonmanufacturer who receives one of these contracts must agree to supply the product of a domestic small manufacturer or processor;
- SBA can waive this requirement;
- Once a waiver of the manufacturer rule is approved, a firm may supply the product of a large manufacturer.

Overview

- Key Definitions
- Regulations, Laws
- Applicability
- Waivers
- Best Practices

Definitions

- ◉ Manufacturer
- ◉ Nonmanufacturer
- ◉ Kit Assembler
- ◉ Reseller
- ◉ Wholesaler

Who is a Manufacturer?

- A manufacturer is a concern which, with its own facilities, performs primary activities in transforming inorganic or organic substances, including the assembly of parts and components, into the end item being acquired.

Who is a Non-manufacturer?

A concern may qualify as a non-manufacturer if:

- Primarily engaged in retail or wholesale and normally sells type of product being supplied
- Less than 500 employees
- Will supply the end product of a small business manufacturer or processor made in U.S. or obtain waiver to non-manufacturer rule

Who is a Kit Assembler?

- When the manufactured item being acquired is a kit of supplies, or other goods provided an offeror for a special purpose, the offeror cannot exceed 500 employees, and 50 percent of the total value of the components of the kit must be a small business under the size standards for the NAICS codes of the components being assembled.
- The offeror need not itself be the manufacturer of any items assembled

Who is a Retailer? Wholesaler?

- Retailer -- a person who is authorized to sell someone else's goods and/or services
- Wholesaler -- An intermediary (go-between) which sells to other intermediaries, such as a firm that buys from a manufacturer and sells to a retailer

Regulatory Requirements

The regulations that govern the NMR:

- ⦿ Federal Acquisition Regulation (FAR) Part 19
 - > FAR 19
- ⦿ Code of Federal Regulations (CFR) 13 CFR
 - > 13 CFR § 121.406
 - > 13 CFR § 121.1201
 - > 13 CFR § 125.15
 - > 13 CFR § 127.505

Statutory Requirements

- The Small Business Act (Public Law 85-536)
- The NMR applies to contracts above \$25,000, in which the small business must furnish the product of a small business manufacturer, when the small business is supplying a product it did not manufacturer.
- SBA can waive the requirement

Interaction of Small Business Programs

Below the SAT

- Small business set asides are mandatory for the acquisition of supplies and services valued from \$3,000 to \$150,000
- FAR permits but does not require the reservation of an award of a contract with a value less than the SAT to different types of small businesses such as 8(a), HUBZone, WOSB, SDVO SBCs

Interaction of Small Business Programs

Above the SAT

- SBA's regulations provide for parity among certain small business programs
- KO will determine which set-aside program to use

Applicability of the NMR

- Small business set-asides on supply contracts
- The NMR will be applied when a small business nonmanufacturer will provide the end item of:
 - a small business manufacturer
 - an other than small business manufacturer under an existing class waiver
 - an other than small business manufacturer under an existing individual (solicitation-specific) waiver
- Does not apply to full and open solicitations.

When the NMR does NOT apply

- There are NO waivers to the NMR for:
 - Blanket Purchase Agreements
 - Services or construction contracts
 - HUBZone Contracts
 - NAICS codes outside of sector 31-33, Manufacturing
 - After offers are received on a solicitation

Choosing NAICS Codes

- The North American Industry Classification System (NAICS) code chosen must be that which best describes the principal purpose of the product or service being acquired
- Procurements for supplies must be classified under the appropriate manufacturing NAICS code, NOT under the wholesale or retail trade NAICS code.
13 C.F.R. § 121.402(b)
- **SECTORS 42, 44 and 45 ARE NOT TO BE USED FOR GOVERNMENT PROCUREMENT OF SUPPLIES**

Applying NAICS Codes to Acquisitions

- KO designates the size standard of the procurement by selecting the size standard in effect on the date the solicitation is issued
- The basis for designation NAICS that ***best describes the goods or services that are going to be procured.***
- SBA's size regulations pertaining to federal procurement are also found in the Federal Acquisition Regulation, 48 CFR part 19.
- To bid on a federal contract, a concern must self-certify that it is a small business under the appropriate size standard in the solicitation.

Applicable Size Standards-NMR

- A small business nonmanufacturer must meet size standards that apply to acquisitions covered by the NMR.
 - A small business nonmanufacturer (500 or less employees) will provide the end item of:
 - ✦ a small business manufacturer (as regulated by SBA's Table of Size Standards 13 C.F.R. § 121)
 - ✦ an other than small business manufacturer under a waiver
- The size standard for a nonmanufacturer is 500 or less employees. ***In any case, a small business nonmanufacturer cannot exceed 500 employees.***

Waivers to the NMR

- Two types of waivers

- Class Waiver

- Individual Waiver

Class Waivers to the NMR

- A class waiver applies to all items in a class of products
- Class waivers apply to categories of items and continue in effect unless revoked by SBA.
- A waiver of the NMR for classes of products has no time limitation or duration.
- Any government agency, business association, or interested party may request a waiver for a class of products.
- Discovery of even one small business manufacturer for a single item in the class will justify denial of a request for a class waiver.

Individual Waivers to the NMR

- SBA will consider granting an individual waiver when a KO determines no small business manufacturers exist to meet requirement
- The waiver to the NMR on an individual procurement is provided for in Section 8(a)(17) of the Small Business Act.
- An individual waiver is narrowly applied to select contract line item numbers (CLINS) for a specific solicitation.

How to Obtain a Waiver

- 13 C.F.R. 121.406 and 121.1204
- www.sba.gov
- MARKET RESEARCH report to justify the claim that no small business manufacturers exist

Market Research Recommendations

- ◉ SBA's Dynamic Small Business Search - CCR or <http://dsbs.sba.gov>
- ◉ FedBizOps – Sources Sought results
- ◉ Summary of event results, i.e. “Industry Day” etc.
- ◉ Online product information
- ◉ Acquisition history
- ◉ SBA Procurement Center Representative (PCR)
- ◉ FAR Part 10

Identification of Small Business Sources on Multiple Item Request for a Single Solicitation (Individual Waiver)

- Each line item must identify whether the end product will be supplied by a small business manufacturer
- One waiver per solicitation

Best Practices

- Plan ahead
- Solid market research
- Communicate with the small business office to identify small business goaling needs or opportunities
- Work with an SBA PCR - Small Business Coordination Record (Form DD 2579)
- Use the right NAICS code for procurement of supplies

Questions?

Nonmanufacturer Rule Program

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